

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
JURISDICTIONAL STATEMENT.....	4
STATEMENT OF FACTS.....	5
POINT RELIED ON.....	9
POINT I.....	9
POINT II.....	11
ARGUMENT.....	12
POINT I.....	12
POINT II.....	21
CONCLUSION.....	24
CERTIFICATE OF SERVICE.....	25
CERTIFICATE OF COMPLIANCE, RULE 84.06.....	26

TABLE OF AUTHORITIES

CASES

<u>In Re Adams</u> , 737 SW2d 714 (Mo.Banc.1987).....	9,11,13,22
<u>In Re Caranchini</u> , 956 SW2d 910 (Mo.Banc.1997).....	14,22
<u>In Re Charron</u> , 918 SW2d 257 (Mo.Banc.1996).....	10,13,17,18,19
<u>In Re Coe</u> , 903 SW2d 916 (Mo.Banc.1995).....	14
<u>In Re Cupples</u> , 979 SW2d 932 (Mo,Banc.1998).....	10,16,17
<u>In Re Frank</u> , 885 SW2d 328 (Mo.Banc.1994).....	10,14,16
<u>In Re Lang</u> , 641 SW2d 77 (Mo. Banc.1982).....	10
<u>In Re Lavin</u> , 788 SW2d 282 (Mo. Banc.l990).....	13
<u>In Re McBride</u> , 938 SW2d 905 (Mo. Banc.1997).....	10,15,16
<u>In Re Oberhellman</u> , 873 SW2d 851(Mo. Banc. 1994).....	13
<u>In Re Warren</u> , 888 SW2d 337 (Mo. Banc.1994).....	15

RULES

Rule 4-1.15.....	5
Rule 4-8.4(b).....	5
Rule 4-8.4(c).....	5
Rule 5.....	4
Rule 5.21(c).....	15
Rule 5.5(c).....	5

Rule 15.....	11,22,23
Rule 15.05.....	6
Rule 84.06.....	26
Rule 84.06(b).....	26
Rule 55.03.....	26

OTHER AUTHORITIES

Article 5, section 5, Missouri Constitution.....	4
Section 484.040 RsMo.(1994).....	4

JURISDICTIONAL STATEMENT

This appeal arises from an attorney discipline matter which originated in the 21st Judicial Circuit, Saint Louis County of the State of Missouri, and therefore is reserved to the jurisdiction of this court pursuant to the provisions of Article 5, section 5 of the Missouri Constitution, as well as Supreme Court Rule 5, and section 484.040 Rsmo, (1994), as set out in the precedent of this court.

STATEMENT OF FACTS

This is a disciplinary matter concerning Thomas J. Hellman's license to practice law, Missouri Bar Number 20658. Mr. Hellman, hereafter referred to as the Respondent, was licensed to practice law in Missouri in 1968, and has actively practiced law since that time.(Tr. 10) During the course of his practice of law, Respondent has practiced in partnership with other attorney's, but at the relevant times herein he was a sole practitioner. (Tr. 21) His license to practice law was in good standing at the time that the Information herein was filed by the Disciplinary Committee and his offices were located in Saint Louis County, Missouri. (Tr.10,Information #3)

On or about July 1, 1999 the Respondent was served an Information indicating that Division IV of Region X Disciplinary Committee having found probable cause, charged Respondent with two counts of professional misconduct. Count I included the charge that Respondent had violated Rule 4-8.4(b) and (c) and Rule 4-1.15 upon his misappropriation of estate funds belonging to the estate of James T. Piper. in which the Respondent served as personal representative. The misappropriated funds totaled approximately one hundred thousand dollars. The Respondent had prior to the hearing of this matter provided full restitution to the

beneficiary of the estate, plus interest. (Tr. 12) Count II included the charge that Respondent had violated Rule 5.5(c) by continuing to practice law while non-compliant with the provisions of Rule 15.05 regarding minimum continuing legal education requirements.

In the Answer to the Information filed by the Respondent, he admitted the allegations contained therein, and acknowledged his professional misconduct. The Respondent reaffirmed those admissions in his testimony before the Disciplinary Committee at the hearing held on or about February 25, 2000.(Tr.12,13) At the hearing, the Missouri Supreme Court Advisory committee was represented by Mr. Ronald C. Willenbrock, Mr. Robert S. Dakich, and Mr. Richard Bender. The Respondent was represented by counsel, and Ms. Maia Brodie represented the Informant.

The Disciplinary Committee heard testimony from experienced and respected members of the Missouri Bar, including, Mr. Michael Gunn, Mr. Andrew Leonard, and Mr. James Holloran, and received into evidence letters from each of these witnesses urging the committee to refrain from the disbarment of the Respondent. (Resp. Ex.1-5),(Tr. 73-74) Each of the attorney witnesses stated that they believed the admitted misconduct to be aberrant and knew the Respondent to be a man of good character, excellent legal proficiency and strong moral conviction. (Tr. 56,59-60,62,66) Fr. Gerard Welsh, a Catholic priest testified that

he knew the Respondent to be a man of fine character, who contributes to the community not only by providing excellent legal services, but also by assuming positions of responsibility outside of the law, and executing the responsibilities of those positions with honor and integrity. (Tr.51-52)

Testimony was also adduced from Dr. Lawrence Kuhn, a board-certified psychiatrist licensed to practice medicine in Missouri.(Tr. 21) Family members, friends, and Respondent's counsel had recommended Dr. Kuhn to Respondent. (Tr. 41-42) Dr. Kuhn undertook the treatment of the Respondent in July of 1999, and following his standard course of practice which included six office visits, Dr. Kuhn diagnosed the Respondent. Following his interviews, and evaluation of Respondent, Dr. Kuhn determined that at all relevant times outlined in the Information, the Respondent suffered from Major Affective Disorder, Depressed-Type.(Resp. Ex. 5) Dr. Kuhn prescribed medication, which after some modification (Tr.31-32) has benefited Respondent. Dr. Kuhn concluded that the depression suffered by the Respondent affected his decisions and his ability to concentrate and to organize. Dr. Kuhn noted that currently, Respondent's condition is well managed, void of any personality disorders or genetic predispositions to mental illness other than depression, and that his prognosis is good. (Tr. 33-36,40).

On or before April 12, 2001 the Disciplinary Committee filed its Findings of Fact, Conclusions of Law and Recommendations Regarding Discipline. Noting specifically, the depression suffered by the Respondent, and the other testimony of the witnesses relating to the good character and practice of the Respondent, and setting out clearly, the grave nature of the admitted misconduct, the Committee recommended disciplinary action against the Respondent on each of the two counts. With regard to both counts one and two the Committee recommended that the Respondent's license to practice law be indefinitely suspended, without the right to seek reinstatement for at least twelve (12) months. The Respondent respectfully urges this court to accept the recommendation of the Committee as articulated in their Findings of Facts and Conclusions of Law and Recommendation Regarding Discipline.

POINT RELIED ON

I

THE MISSOURI SUPREME COURT SHOULD ACCEPT THE RECOMMENDATION OF THE DISCIPLINARY COMMITTEE HEREIN AND REJECT THE SANCTION OF DISBARMENT IN THIS MATTER BY IMPOSING THE SANCTION OF INDEFINATE SUSPENSION WITHOUT THE OPPORTUNITY FOR REINSTATEMENT FOR NOT LESS THAN 12 MONTHS, FOR THE ADMITTED OFFENSE OF MISAPPROPRIATION OF FUNDS FROM AN ESTATE FOR WHICH THE RESPONDENT WAS SERVING AS PERSONAL REPRESENTATIVE: THE RECORD REFLECTS CREDIBLE, SUBSTANTIVE EVIDENCE FROM PROMINENT MEMBERS OF THE MISSOURI BAR, AND THE COMMUNITY, THAT THE ADMITTED WRONGDOING BY THE RESPONDENT THOUGH KNOWING, WAS ABERRANT, ISOLATED CONDUCT, WHICH WAS INCONSISTANT WITH THE RESPONDENT'S PERSONAL AND PROFESSIONAL CHARACTER AND REPUTATION,

**AND FURTHER WAS MITIGATED BY THE RESPONDENT'S MAJOR
AFFECTIVE DISORDER, DEPRESSED-TYPE.**

In Re Adams, 737 SW2d 714 (Mo.Banc.1987)

In Re Charron, 918 SW2d 257 (Mo.Banc. 1996)

In Re Cupples, 979 SW2d 932 (Mo.Banc.1998)

In Re Frank, 885 SW2d 328 (Mo.Banc.1994)

In Re Lang, 641 SW2d (Mo.Banc.1982)

In Re McBride, 938 SW2d 905 (Mo.Banc.1997)

POINT RELIED ON

II

THE MISSOURI SUPREME COURT SHOULD ACCEPT THE RECOMMENDATION OF THE DISCIPLINARY COMMITTEE HEREIN AND REJECT THE SANCTION OF DISBARMENT IN THIS MATTER BY IMPOSING THE SANCTION OF INDEFINATE SUSPENSION WITHOUT THE OPPORTUNITY FOR REINSTATEMENT FOR NOT LESS THAN 12 MONTHS, FOR THE ADMITTED OFFENSE OF FAILING TO COMPLY WITH MINIMUM REQUIREMENTS OF CONTINUING LEGAL EDUCATION IN THE REPORTING YEARS OF 1996-1997 AND 1997-1998 BECAUSE SUSPENSION IS THE APPROPRIATE SANCTION FOR SUCH A VIOLATION OF RULE 15.

In Re Adams, 737 SW2d 714 (Mo.Banc.1987)

Rule 15

ARGUMENT

I

THE MISSOURI SUPREME COURT SHOULD ACCEPT THE RECOMMENDATION OF THE DISCIPLINARY COMMITTEE HEREIN AND REJECT THE SANCTION OF DISBARMENT IN THIS MATTER BY IMPOSING THE SANCTION OF INDEFINATE SUSPENSION WITHOUT THE OPPORTUNITY FOR REINSTATEMENT FOR NOT LESS THAN 12 MONTHS, FOR THE ADMITTED OFFENSE OF MISAPPROPRIATION OF FUNDS FROM AN ESTATE FOR WHICH THE RESPONDENT WAS SERVING AS PERSONAL REPRESENTATIVE: THE RECORD REFLECTS CREDIBLE, SUBSTANTIVE EVIDENCE FROM PROMINENT MEMBERS OF THE MISSOURI BAR, AND THE COMMUNITY, THAT THE ADMITTED WRONGDOING BY THE RESPONDENT THOUGH KNOWING, WAS ABERRANT, ISOLATED CONDUCT, WHICH WAS INCONSISTANT WITH THE RESPONDENT'S

**PERSONAL AND PROFESSIONAL CHARACTER AND REPUTATION,
AND FURTHER WAS MITIGATED BY THE RESPONDENT'S MAJOR
AFFECTIVE DISORDER, DEPRESSED-TYPE.**

This Court reviews Discipline matters De Novo. In Re Adams, 737 SW2d 714(Mo.Banc.1987), In Re Lavin, 788 SW2d 282(Mo.Banc.1990). De Novo review requires this court to determine for itself the credibility, weight and value of the witnesses and other evidence presented to the Discipline Committee, and further to draw its own conclusions of law, id. The decisions of a Master or as in this case the Committee may not be disregarded by this court, but are to be considered and recognized as advisory. In Re Oberhellman, 873 SW2d 851(Mo.Banc.1994) Following a hearing upon the merits of the Information filed against the Respondent, which included testimony, from the Respondent and the witnesses, the Committee determined that the facts of the case, the gravity of the matter, and the character of the Respondent, required the sanction of an indefinite suspension of the Respondent's license to practice law, without the opportunity to apply for reinstatement for not less than twelve months. The Respondent respectfully urges this court to accept the recommendation of the Discipline Committee.

As a general matter this court faces two questions in the evaluation of claims of professional misconduct by attorneys. First, were the Rules of Professional Conduct violated and second, what is the appropriate sanction. In Re Charron, 918 SW2d 257(Mo.Banc.1996). In the instant matter, the Respondent has admitted the allegations contained in the information. (Tr.12-13) Therefore, having stipulated that violations of the Rules of Professional Conduct have occurred, the only question remaining for this court to consider herein is the question of the appropriate sanction.

This court has consistently maintained that sanctions or disciplinary actions are intended to protect the public and not to punish the individual attorney. In Re Caranchini, 956 SW2d 910(Mo.Banc.1997), In Re Coe, 903 SW2d 916, 918(Mo.Banc.1995). Of course there is a punitive component to disciplinary sanctions, but sanctions in Missouri are considered primarily remedial. Id. Additionally, sanctions are intended to maintain the integrity of the legal profession. In Re Frank, 885 SW2d 328, 333(Mo.Banc.1994). In the instant case, the imposition of a Suspension for an indefinite period, without the opportunity to apply for readmission for not less than 12 months will protect the public, without denying the public perpetually the substantial legal talent of the Respondent. The same sanction will maintain the integrity of the legal profession and allow the disciplinary committee, and this court to receive information to confirm that the

remedial measures undertaken by the Respondent prior to, and contemporaneously with the disciplinary hearing remain effective at the time of any readmission application of Respondent.

Three broad options for sanctions are recognized in Missouri. (Rule 5.21(c)). They are disbarment, suspension, and reprimand (public and /or private). This court has defined these sanctions consistently as follows: Disbarment is reserved for those cases in which it is clear that the Respondent should not be allowed to practice law. In Re Thomas McBride, 938 SW2d 905,908(Mo.Banc.1997); Reprimand, is appropriate only where the attorney's breach of discipline is an isolated act...and does not involve dishonest, fraudulent or deceitful conduct on the part of the attorney. Id.; Suspension is appropriate when a lawyer knowingly engages in criminal conduct...that seriously adversely reflects on the lawyer's fitness to practice law. Id. See also; In Re Warren, 888 SW2d 337(Mo.Banc.1994).

The application of the above definitions to the instant matter reveals that suspension is the appropriate sanction. In the instant matter the Respondent has acknowledged that his conduct was knowing, albeit clouded by the effects of his illness, diagnosed by his psychiatrist Dr. Lawrence Kuhn as major affective disorder, depressed-type. (Resp. Ex. 5) The amount of funds involved herein certainly "seriously adversely reflects on the lawyer's fitness to practice law" In Re

Warren, supra. However, the credible, competent, and uncontroverted evidence upon this record demonstrates that the actions of the Respondent in their entirety do not indicate that “it is clear that the Respondent should not be allowed to practice law.” In Re McBride, supra. Nor does the record support the conclusion that this is an unmitigated clear case of gross misconduct where an attorney is demonstrably unfit to continue the practice of law. In Re Frank, supra. Therefore the sanction of disbarment as advocated by the Informant is inappropriate in this case.

In determining the proper sanction to be applied against the Respondent, this court must weigh the aggravating and mitigating circumstances present in the case. In Re Cupples, 979 SW2d 932(Mo.Banc.1998). Factors previously considered by this court in the weighing process include; prior disciplinary offenses, dishonest or selfish motives, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of conduct, level of experience and restitution. Id. See also; In Re Frank, 885 SW2d 328(Mo.Banc.1994) The record in the instant case is comprised of substantial, competent and weighty evidence of mitigating factors in excess of the aggravating factors present which again must lead this court away from the extreme sanction of disbarment, as suggested by the Informant, and toward the appropriate sanction of indefinite suspension as recommended by the Disciplinary Committee and respectfully urged by the Respondent.

The record herein supports the following conclusions of fact by substantial and competent evidence largely uncontroverted by the Informant. First, the Respondent has acknowledged his misconduct. (Tr.12,13). The Respondent cooperated in all respects with the disciplinary process and the requirements of the disciplinary committee, including admitting upon the record his misconduct. (Tr. passim) The admitted misconduct was confined to one matter or Estate, and though grave and substantial harm was done to that Estate, there was no injury to the community or the profession beyond the instant misappropriation. See: In Re Charron, 918 SW2d 257(Mo.Banc.1996). In no other case did the Respondent engage in similar misconduct to that considered herein. (Tr. 25) The Respondent made full and immediate restitution to the Estate of all of the misappropriated funds. (Tr.19). The Respondent has not been previously charged with serious breaches of ethics or professional misconduct. (Tr. 13-17). The Respondent has substantial and successful experience in the law, however, limited experience in the area of Estate/Probate administration despite his considerable experience in the authorship of wills.(Tr.24). These conclusions of fact, “fortify a finding” that suspension is mandated. Compare: In re Cupples supra.

The Informant seems to urge the abandonment of the balancing of mitigating and aggravating factors to determine the appropriate disciplinary sanction in this case. Instead the Informant argues in favor of a bright-line application of

Disbarment whenever there is a misappropriation of funds of a substantial nature. (Informant's Brief at 10-11). This is not supported by the precedent of this court. This court has always engaged in the weighing process set out above, and has in cases concerning the misappropriation of substantial funds, found indefinite suspension to be the appropriate sanction.

The specific consideration of In Re Charron, 918 SW2d 257(Mo.Banc.1996) is appropriate as it presents facts very similar to those at issue in this matter, and a disposition consistent with the Respondent's position herein that suspension is the appropriate sanction for these facts. In Charron, the attorney was charged with professional misconduct involving the misappropriation of funds in the amount of \$20,000.00 belonging to an estate in which the attorney acted as the personal representative. This court in Charron held that a suspension was the appropriate disciplinary action since Charron suffered from a depression disorder at the time of the misconduct, and further had suffered personnel losses that directly affected his ability to operate his practice. The same factors are present in Respondent's case as supported by the record. (Tr. 26-41). This court also noted in Charron that there was no injury to the community, the profession or the client beyond the misappropriation at issue. id. The decision in Charron noted specifically that disbarment is often the sanction imposed in misappropriation cases but in applying the balancing test, found there, as here, that Suspension more appropriately

addressed the aggravating features of the bad conduct while recognizing the mitigating features also present.

One of the mitigating features specifically considered by this court in Charron, supra; and In Re Lang, 641 SW2d 77, 79(Mo.Banc.1982) is mental illness, specifically including depression. Obviously, mental illness that renders an attorney incapable of rational thought or unable to discern reality may require disbarment. However, in Respondent's case, his treating psychiatrist did not find any significant personality disorder or other illness that would rise to this level. (Tr. 33-36,40) Rather, Dr. Kuhn indicated that the respondent was able to discern right from wrong, and does not suffer from any personality disorder, but as a result of his depression was overwhelmed, "paralyzed", unable to organize or order his practice. (Resp. Ex. 5). Dr. Kuhn further indicated that Respondent's mental illness was controllable, and that Hellman had responded well to the second course of medication utilized by Dr. Kuhn for Respondent's benefit. (Tr.31-32) The Respondent also testified that he now recognized that he suffered from depression, and that he would understand the signs of any reoccurrence, and would seek immediate medical care. (Tr. 89) Both Dr. Kuhn and the Respondent testified that they believed that Respondent's prognosis vis-à-vis the disease was good. (Tr. 33-36,89,)

Testimony was adduced from three members of the Missouri Bar; James Holleran, Michael Gunn, and Andrew Leonard, on the behalf of the Respondent. Each of these outstanding attorneys testified that they were familiar with the Respondent, in both his personal and professional life, and that the admitted professional misconduct was wholly inconsistent with the Respondent's Character. Each of the three witnesses indicated that Respondent is an excellent attorney, respected by his peers, for his knowledge of the law as well as for his compassionate and thorough manner with his clients. None of the attorney witnesses condoned or excused Respondent's admitted misconduct, but all expressed the opinion that it was an abberation and in no way illustrative of the standards to which the Respondent generally conducted his affairs. (Tr.56,59-62,66) Andrew Leonard, in his letter to the Committee, which was entered as an exhibit at the hearing, stated that the misappropriation was "an anomaly" and that the Respondent, had been "frozen" by the enormity of his improper action, and overwhelmed by the deviation from his otherwise "pure and honest character". (Resp. Ex. 1.)

Each of the three attorney witnesses testified that they did not, based upon their knowledge of the Respondent, expect any similar conduct on his part in the future, and all noted the fine legal service that he had provided to the community. Mr. Leonard wrote to the Committee of Respondent the following; "He is resolute

in his intentions to make up for this to his family, his clients, the Bar and to himself.”(Resp. Ex.1) Each of the witnesses in their written letters, and personal remarks to the Discipline Committee urged sanction less than Disbarment. (Tr.62,73-74),(Resp.Ex.5)

Fr. Gerard Welsh, a Catholic priest from Saint Louis County, testified that he had known the Respondent and his family while all were members of St. Joseph Parish in Manchester Missouri. Fr. Welsch testified that the Respondent was an active member of the Parish, holding positions of responsibility and that the Respondent was a man of good character.(Tr.50,52) Fr. Welsch was also familiar with the Respondent’s professional competence as the priest would refer clients to the Respondent for legal advise. (Tr.51-52) All such referred clients who reported back to Fr. Welsch, indicated great satisfaction with the legal work provided by the Respondent. (Resp. Ex.4).

II

THE MISSOURI SUPREME COURT SHOULD ACCEPT THE RECOMMENDATION OF THE DISCIPLINARY COMMITTEE HEREIN AND REJECT THE SANCTION OF DISBARMENT IN THE MATTER BY IMPOSING THE SANTION OF INDEFINATE SUSPENSION WITHOUT

THE OPPORTUNITY FOR REINSTATEMENT FOR NOT LESS THAN 12 MONTHS, FOR THE ADMITTED OFFENSE OF FAILING TO COMPLY WITH MINIMUM REQUIREMENTS OF CONTINUING LEGAL EDUCATION IN THE REPORTING YEARS OF 1996-1997 AND 1997-1998 BECAUSE SUSPENSION IS THE APPROPRIATE SANCTION FOR SUCH A VIOLATION OF RULE 15.

This is an attorney disciplinary matter and as such this Court must apply a De Novo standard of review. In Re Adams, 737 SW2d 714(Mo.Banc.1987). The relevant questions before the court are first, whether there has been a violation of the Rules of Professional Conduct, and second, what is the appropriate sanction. In Re Caranchini, 956 SW2d 910(Mo.Banc.1997). The respondent has admitted his failure to report his compliance with Continuing Legal Education requirements, (CLE hours), and therefore the instant matter concerns the appropriate sanction to be imposed.

The Informant's argument on this issue indicates that the Informant recognizes that this charge is insufficient as an independent ground for disbarment, leaving available the sanctions of reprimand and suspension. The Respondent, Thomas Hellmann concurs that a violation of Rule 15 under circumstances such as those in the instant case, do not independently warrant the sanction of Disbarment.

Respondent does not suggest that this court does not have the authority to disbar attorneys pursuant to violations of Rule 15, in appropriate cases, but simply concurs with the Informant that the precedent of this court tends to indicate the application of other sanctions by the court to Rule 15 violations. Therefore the appropriate sanction is that suggested by the Discipline Committee, and respectfully urged by the Respondent—an indefinite suspension of the Respondent’s license to practice law, without the opportunity for reinstatement for not less than twelve months.

The respondent concurs with the assertion of the Informant that no reported cases can be found concerning the appropriate sanction for a Rule 15 violation, however, the Respondent respectfully asserts that the same test applied to all disciplinary matters applies here. First the Court must balance mitigating and aggravating factors concerning the professional misconduct, and must consider the definitions of the three recognized sanctions, and select that sanction which appropriately addresses the circumstances of the bad conduct and the characteristics of the attorney charged. Applying this analysis to the instant matter, an indefinite suspension both addresses the serious nature of the professional misconduct, but also recognizes the mitigating factors present herein, including the Respondent’s major affective disorder, depressed-type.

The Respondent has substantially completed the deficit CLE hours, and at the time of the hearing before the Discipline Committee needed only four to six additional hours, to satisfy all outstanding deficits. The CLE deficits occurred in roughly the same years as the admitted misconduct as set out in point I herein, and as a consequence, the same mitigating features exist.

CONCLUSION

Respondent, Thomas J. Hellman respectfully requests that this court in the exercise of its authority to discipline him upon the violations of the Rules of Professional Conduct to which he has admitted culpability, consider all of the circumstances and conditions surrounding the admitted violations. Not in an effort to excuse or disregard the serious nature of the acts of misconduct, or to negate Respondent's culpability but rather in an effort to recognize the remedial nature of disciplinary proceedings, and to fully weigh all of the mitigating conditions against the aggravating conditions present.

Humbly, the Respondent suggests that the record demonstrates by a preponderance of the evidence that the mitigating factors present in the instant case outweigh the aggravating factors sufficiently to remove this case from those cases

in which disbarment is the appropriate sanction. Therefore the recommended sanction of indefinite suspension without the opportunity for reinstatement for a period of not less than twelve (12) months is appropriate. The application of this very serious sanction will protect the public, by denying the Respondent readmission to the Bar without a demonstration that the remedial efforts that he has undertaken continue to be effective. However, this sanction will not permanently deprive the public of this compassionate and respected attorney. The application of this sanction to the Respondent will continue to recognize in Missouri that attorneys have a strict obligation to adhere their behavior to the Rules of Professional Conduct, but that emotional or psychological conditions such as that suffered by the Respondent, if untreated, may prevent or otherwise impair an attorney's ability to conform his practice of the law to those same Rules.

CERTIFICATE OF SERVICE

Two copies of the above Brief and Argument of the Respondent was mailed on this _____ day of _____ by United States Mail, Postage

prepaid, to Ms. Sara Rittman, Acting Chief Disciplinary Counsel, 3335 American Avenue, Jefferson City, Missouri 65109.

Mary Elizabeth Ott MBE 35302

RULE 84.06 CERTIFICATION

I Certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 4,077 words, 23,239 characters, according to Microsoft Word 98, which is the word processing system used to prepare this brief; and
4. That this disk provided to this court has been scanned by Norton Anti-Virus software and to the best knowledge and belief of the provider is virus free.

Mary Elizabeth Ott

